EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS]

IN THE DISTRICT COURT
AT HAMILTON

I TE KŌTI-Ā-ROHE
KI KIRIKIRIROA

CIV-2018-019-001456
[2019] NZDC 8519

BETWEEN	PETER JOHN MCCLUNG Appellant
AND	TERENCE JOHN MCCULLOUGH Respondent

Hearing: 6 May 2019

Appearances: Appellant appears in Person
D Delic for the Respondent

Judgment: 6 May 2019

ORAL JUDGMENT OF JUDGE P W COOPER

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[1] This is an appeal by Mr McClung from an order of the Tenancy Tribunal made on 6 December 2018 whereby the tenancy of McClung in respect of the property at [residential address deleted] was terminated and possession of the property was granted to Mr McCullough.

[2] That hearing was in Te Kuiti on 6 December 2018. There had been an earlier hearing in September 2018 which the appellant did not attend. He applied successfully for a rehearing and at the hearing on 6 December 2018, he was given the opportunity to present his case in full. It is important to note that this particular appeal relates simply to the order determining the appellant's occupation of the property. It is not an order in relation to arrears of rent. It was to terminate his tenancy and grant possession to Mr McCullough. There is a separate set of proceedings before the Tribunal in relation to alleged arrears of rent.

[3] The District Court, in the case of *Housing New Zealand Corporation v Salt,*[1] set out the general principles in relation to Tenancy Tribunal appeals. Those being that:

(a) The District Court will be slow to depart from the Tribunal's findings on the facts, given that the Tribunal is a specialist body.

(b) The District Court must acknowledge the advantage enjoyed by the Tribunal which had the opportunity to hear from the parties and determine issues of credibility.

(c) There is something akin to a presumption that the decision appealed from is correct. It is also customary for this Court to exercise restraint in interfering with discretionary decisions.

(d) The Court will only differ from factual findings of the Tenancy Tribunal if the conclusion reached was not open on the evidence. That is, where there is no evidence to support it or the Tribunal was plainly wrong in the conclusion it reached.

[4] The appellant has raised three broad issues on this appeal. The first, essentially, is that he did not get a fair hearing; that the Tribunal was biased against him and did not properly take into account the evidence that he presented. This is an argument which is often raised by dissatisfied litigants. In this case, there is no basis whatsoever for that assertion.

[5] The Tribunal has given the appellant two separate opportunities to present his case. He did not appear on the first occasion. He was granted a rehearing and was given the opportunity to fully present his case on the second hearing and he did so. The matters raised on this appeal are all matters which were raised and properly dealt with by the adjudicator.

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[1] *Housing New Zealand Corporation v Salt* [2008] DCR 697.

[6] In relation to the allegation that the adjudicator was biased against the appellant, there is absolutely nothing in the transcript of evidence or the documentation before the Court which would substantiate that kind of wild allegation.

[7] The next point is that the Tribunal held that there was a residential tenancy. That was in terms of an agreement that was entered into between the parties on 20 February 2015. That document has been signed by both parties, has been put in evidence and it provides for a fixed term tenancy commencing on 20 February 2015 and ending on 20 February 2018.

[8] The agreement itself provided for rent of $250 per week, although the appellant says that somewhere along the line that was varied to $200 a week. Whether or not it was varied to $200 a week is really not a matter of relevance to the present appeal because this is not an appeal in relation to calculating the quantum of arrears of rent. It is whether the Tribunal acted correctly in terminating the tenancy and granting possession of the property to Mr McCullough.

[9] In relation to this suggestion that there was an amendment to the rental, that is a matter that is more properly determined in the other proceedings before the Tribunal. The appellant also submits that the adjudicator failed to have sufficient regard to the argument put forward that there was to be an offset in rental against work and improvements that the appellant had done on the property. Again, there is no recorded agreement about that. Whether or not that is in fact the case is a matter for determination in another forum. It is not a matter for this appeal which I reiterate is simply to do with the termination of the tenancy and the granting of possession to Mr McCullough.

[10] The Tribunal in its decision said this:

> "In his evidence today, Mr McClung acknowledged being a party to the residential tenancy agreement dated 20 February 2015 between he and Mr McCullough which was for a three year fixed term ending 20 February 2018 at an initial rental of $250 per week. Mr McClung, however, says that the agreement was part of an intended arrangement where he purchased the property and he says that he has more than covered rent by improvements he has made on the property. Mr McClung is, however, unable to point to any corroborating evidence of that agreement or its terms. Mr McCullough denies

> having made any such agreement. If Mr McClung has an equitable claim for a right to purchase or for improvements made to the property, that is not a matter that is within the jurisdiction of the Tenancy Tribunal."

[11] So the Tribunal said:

> "I am satisfied that the parties were landlord and tenant under a residential tenancy agreement. By not paying rent as required by the agreement, Mr McClung has breached his obligations under it at the date of the application and now the rent is more than 21 days in arrears and in fact Mr McClung accepts that he has not paid rent since June 2016, although he has continued to occupy the property."

[12] In relation to the evidence that the appellant was party to an agreement to purchase the property, the adjudicator noted that there was no evidence before him in relation to that. Today Mr McClung reiterated that there had been such an agreement. He said that such an agreement had, in fact, been recorded in writing.

[13] I stood the matter down until 2.15 pm so that Mr McClung could obtain a copy of the agreement for sale and purchase which he said was held by his former lawyer. When the case resumed at 2.15 pm, Mr McClung provided an agreement for sale and purchase form in the Auckland District Law Society format. That was a document which referred to the address, the subject of these proceedings. It referred to a purchase price of $380,000, it provided for a deposit of $76,000 upon execution of the agreement and it was signed by the appellant.

[14] This "agreement" was not signed by Mr McCullough. So, whatever its background, it is not an agreement which is enforceable, having regard to the provisions of s 24(1) Property Law Act 2007. That requires that an agreement for the disposition of land be in writing or the terms recorded in writing and signed by the person against whom the agreement is sought to be enforced. So there is nothing that has been put before either the Tribunal or this Court on appeal that would enable the Court to conclude that there was an enforceable agreement that Mr McCullough would sell the property to Mr McClung.

[15] All of this was taken into account by the Tribunal adjudicator in a proper manner and I am satisfied that he acted correctly on the evidence before him. There

has been nothing advanced in this appeal which would justify the Court in departing from the findings of the adjudicator. Accordingly, the appeal is dismissed.

[16] Having heard my determination, Mr McClung has summarily left the room. Mr Delic seeks costs. Costs are awarded in favour of the respondent to the appeal on a s 2B basis.

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Judge PW Cooper
District Court Judge

Date of authentication: 13/05/2019